101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
101-370

EMERGENCY CHINESE IMMIGRATION RELIEF ACT OF 1989

NOVEMBER 17, 1989.—Ordered to be printed

Mr. KASTENMEIER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2712]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2712) to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirements for "J" nonimmigrants, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Chinese Immigration Relief Act of 1989".

SEC. 2. STATUS OF CERTAIN NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA.

(a) WAIVER OF FOREIGN RESIDENCE REQUIREMENT FOR "J" NONIMMIGRANTS.—The 2-year home country residence and physical presence period requirement under section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)) is hereby waived in the case of any national of the People's Republic of China (in this Act referred to as "China") if—

(1) the alien is present in the United States on the date of the enactment of this Act (or who would have been present in the United States but for a brief, casual, and innocent departure from the United States),

(2) the alien would otherwise be subject to that 2-year home residence requirement because of having had the status of a

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nonimmigrant described in section 101(a)(15)(J) of such Act (8 U.S.C. 1101(a)(15)(J)), and

(3) not later than 4 years after the date of the enactment of this Act, the alien files a nonfrivolous application for adjustment or any change of status under section 245 or 248 of such Act (8 U.S.C. 1255, 1258).

(b) PRESUMPTION OF CONTINUOUS RESIDENCE FOR CERTAIN PRC NATIONALS.—For purposes of any adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) or any change of status under section 248 of such Act (8 U.S.C. 1258) in the case of an alien who is a national of China and who, as of June 5, 1989, was present in the United States in the lawful status of a nonimmigrant (or who would have been present in the United States in that status but for a brief, casual, and innocent departure from the United States), such an alien shall be considered as having continued to maintain lawful status as such a nonimmigrant (and to have maintained continuously a lawful status) for the period described in subsection (d).

(c) EMPLOYMENT AUTHORIZATION.—Any national of China described in subsection (b) who, as of June 5, 1989, was present in the United States in the lawful status of a nonimmigrant described in subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (or who would have been present in the United States in that status but for a brief, casual, and innocent departure from the United States) shall be granted authorization to engage in employment in the United States and shall be provided with an "employment authorized" endorsement or other appropriate work permit during the period described in subsection (d).

(d) DURATION OF STATUS.—The period referred to in subsections (b), (c), and (e) is the period during which the Attorney General has in effect a deferral of enforced departure for nationals of China.

(e) NOTIFICATION.—In the case of any alien who is a national of China and who is eligible for deferral of enforced departure pursuant to a directive of the Attorney General during the period described in subsection (d) and whose authorized period of stay as a nonimmigrant has expired, the Attorney General shall, instead of initiating deportation proceedings against the alien (including the service of an order to show cause) during the period described in subsection (d), issue to the alien a notice of expiration of nonimmigrant status. Such notice shall be nonadversarial in nature and shall contain an explanation of the options available to such aliens under the directive of the Attorney General and under the Immigration and Nationality Act.

SEC. 3. STANDARDS TO BE APPLIED IN ADJUDICATING APPLICATIONS FOR ASYLUM, WITHHOLDING OF DEPORTATION, AND REFUGEE STATUS FROM CHINESE FLEEING COERCIVE POPULATION CONTROL POLICIES.

(a) IN GENERAL.—With respect to the adjudication of all applications for asylum, withholding of deportation, or refugee status from nationals of China filed before, on, or after the date of the enactment of this Act, careful consideration shall be given to such an applicant who expresses a fear of persecution upon return to China related to China's "one couple, one child" family planning policy. If the applicant establishes that such applicant has refused to abort or

be sterilized, such applicant shall be considered to have established a well-founded fear of persecution, if returned to China, on the basis of political opinion consistent with paragraph (42)(A) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(b) REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Attorney General shall promulgate regulations to implement subsection (a). Such regulations shall provide that an applicant described in subsection (a) shall be considered to have established a well-founded fear of persecution based on political opinion if returned to China if the applicant establishes that—

(1) the applicant (or applicant's spouse) has refused to abort a pregnancy or resisted sterilization in violation of China's family planning policy directives, and

(2) (A) in the case of an applicant for asylum or refugee status, there is good reason to believe that the applicant will be required to abort the pregnancy or to be sterilized or will otherwise be persecuted if the applicant were returned to China, or (B) in the case of an applicant for withholding of deportation, there is a likelihood that the applicant will be required to abort the pregnancy or to be sterilized or will otherwise be persecuted if the applicant were returned to China.

Such regulations shall be effective immediately on an interim basis pending the promulgation of final regulations and shall be applied throughout the Department of Justice.

(c) CONSIDERATION OF OTHER FACTORS.—All other factors (such as overt political activities, membership in an ethnic or religious minority, and family background and history) which may contribute to a determination that an applicant described in subsection (a) is eligible for asylum, withholding of deportation, or refugee status are to be given additional weight.

(d) EFFECTIVE DATE.—Subject to subsection (b), the provisions of this section shall take effect on the date of the enactment of this Act.

And the House agree to the same.

BOB KASTENMEIER,
BRUCE A. MORRISON,
HOWARD L. BERMAN,
LAMAR SMITH,
BILL MCCOLLUM,
Managers on the Part of the House.

EDWARD KENNEDY,
PAUL SIMON,
AL SIMPSON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the Senate amendment to the bill (H.R. 2712) to facilitate the adjustment or change of status of Chinese nationals in the United States by waiving the 2-year foreign residence requirement for "J" nonimmigrants submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment to the Senate amendment to the text of the bill struck out all after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the House amendment to the Senate amendment to the text of the House bill with an amendment which is a substitute for the Senate amendment to the text and the House amendment to the Senate amendment to the text. The differences among the Senate amendment to the text, the House amendment to the Senate amendment to the text, and the substitute agreed to in conference are noted below, except for conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Scope of Waiver of 2-Year Foreign Residence Requirement

The Senate amendment limited the availability of the waiver of the 2-year foreign residence requirement to Chinese nationals who are "otherwise eligible for adjustment of status under the Immigration and Nationality Act" during the period of time during which the Attorney General has in effect a deferral of enforced departure for nationals of the People's Republic of China.

The House amendment to the Senate amendment made the waiver available without regard to the alien's eligibility for adjustment of status and imposed no limitation on the period of time during which aliens would have had to apply for the waiver.

The conference substitute adopts the Senate provision with two modifications. First, the waiver would be available during a 4-year period (beginning on the date of enactment). Second, in order to qualify for the waiver an alien would have to file, during the 4-year period, a nonfrivolous application for adjustment of status under section 245 (immigrants) or change of status under 248 (nonimmigrants) of the Immigration and Nationality Act.

The conferees note that the substitute language does not make the availability of the waiver contingent upon the alien's ultimate success in obtaining adjustment of status. Instead, any timely application for adjustment of status that on its face presents an

honest and plausible case for adjustment shall have the effect of permanently waiving the foreign residence requirement that otherwise would have applied to that individual.

The conference substitute, by waiving the foreign residence requirement for individuals who file nonfrivolous applications for adjustment, effectively lifts the limitations on adjustment of status of "J" nonimmigrants contained in section 248(3) of the Immigration and Nationality Act.

Chinese Fleeing Coercive Population Control Policies

The Senate amendment required all adjudicators of asylum or refugee status to give the fullest possible consideration to applications from nationals of the People's Republic of China who express a fear of persecution upon return to that country because they refuse to abort a pregnancy or resist surgical sterilization in violation of Chinese Communist Party directives on population.

The House amendment to the Senate amendment included no similar provision.

The conference substitute requires all officers and employees of the Department of Justice to give careful consideration to all applications for asylum, withholding of deportation, and refugee status filed by Chinese nationals who express a fear of persecution upon return to China because of China's "one couple, one child family planning policy". The substitute also requires the Attorney General to promulgate regulations that specify that an applicant who has violated that policy by becoming pregnant or by refusing to abort a pregnancy or resisting sterilization shall be considered to have established a well founded fear of political persecution if evidence exists that the individual will be persecuted if returned to China.

The conference substitute contains guidelines to be applied in adjudicating applications for asylum, withholding of deportation, and refugee status from Chinese nationals fleeing coercive population control policies.

Language from the Senate amendment—which allowed the Attorney General to deny asylum to any person who otherwise qualified for the benefits of this section, if that person was merely attempting to evade U.S. immigration laws—was deleted in the conference substitute.

In so doing, it is not the intent of the conferees to overturn any administrative or judicial precedents already established concerning persons who commit acts for the sole purpose of creating a pretext for invoking a fear of persecution.

Bob Kastenmeier,
Bruce A. Morrison,
Howard L. Berman,
Lamar Smith,
Bill McCollum,
Managers on the Part of the House.

Edward Kennedy,
Paul Simon,
Al Simpson,
Managers on the Part of the Senate.

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